secondly, there is no provision in the English Rent Restriction Acts corresponding to paragraph (c) of section 16 of the Ordinance which relates, *inter alia,* to members of the tenant's family and thirdly, there was no person residing in the house and taking upon herself the role played by Aminah in the present case. With regard to the first matter there was some discussion by Evershed M.R. at pages 161 and 162 of the report of the meaning to be given to the words "retains possession" in section 15(1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 which provides, *inter alia,* that a tenant who by virtue of the provisions of the Act retains possession of any dwelling-house to which the Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy. In the construction and application of the English Rent Restriction Acts the words "retains possession" have been given a very special meaning. This is directly due to the principle laid down in *Skinner v. Geary*[2], *supra* and elaborated in *Brown v. Brash*[3], *supra,* a statutory tenant who desires protection under the Rent Restriction Acts must either remain in personal occupation of the dwelling-house or instal in it a caretaker or representative with the status of a licensee and with the function of preserving the premises for his own ultimate homecoming. In the Colony, a statutory tenant is protected under the Ordinance even though he is not residing in the dwelling-house and has no intention of returning to it, provided that a member of his family is residing in it. Such being the law in the Colony, it would in my opinion be wrong to place the same special, indeed peculiar, construction on the words "remains in possession." The test to be applied in the Colony in determining whether a statutory tenant has lost the protection of the statute is different from that to be applied in England. In my opinion the test to be applied in the Colony in determining whether a contractual tenant has become a statutory tenant is also different from that to be applied in England. As I have already indicated, in neither case is it essential for the tenant in the Colony to remain in occupation of domestic premises either in person or through the special type of licensee who has been installed in them with the function of preserving them for his homecoming. If he is already a statutory tenant the premises are protected if a member of his family is residing in them. Where his contractual tenancy has been determined he becomes a statutory tenant if he retains legal possession of the premises through a mere licensee and a member of his family is residing in them; in many cases the licensee and the member of his family would be one and the same person. It is to be observed that in *Thompson v. Ward*[1], *supra,* the question was whether the statutory tenant had by abandoning the premises lost the protection of the statute whereas in the present case the question is whether the plaintiff became a statutory tenant when his contractual tenancy came to an end and continued to be a statutory tenant. In my opinion the plaintiff remained in possession of the premises through the defendant and his daughter Aminah and therefore became a statutory tenant on the determination of his contractual tenancy. Having become a statutory tenant, the plaintiff remained under the protection of the Ordinance because Aminah, who was a member of his family, was residing in the premises. By preserving his status as a statutory tenant the plaintiff also established a sufficient right to or interest in the premises to support an action for trespass.

For the reasons which I have stated I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Christopher & Francis; Donaldson & Burkinshaw.*

LIM ENG LIEW v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) January 14, 1957]

[Ipoh — Criminal Appeal No. 78 of 1956]

Theatres and Places of Public Amusement Enactment, 1936, ss. 3 & 10— "Juke Box" — Whether constitutes a "public amusement"— Whether public amuse ment was "carried on" on premises.

The appellant was the owner of premises at No. 163 Brewster Road, Ipoh, which he conducted as coffee shop and bar. He held a liquor licence in respect of the bar but the premises were not licensed as a place of public amusement. In the premises, besides the usual coffee shop furniture, there was also a "Juke Box". The appellant was charged with keeping open "a place of public amusement, to wit, a bar where entertainment in the form of music from a juke box is carried on without a licence issued in that behalf" an offence under section 3 punishable under section 10 of the Theatres and Places of Public Amusement Enactment, 1936. He was convicted and fined $25.

On appeal, two questions arose: (i) whether the operation of the "Juke Box" constituted a public amusement; (ii) whether public amusement was "carried on" on the premises.

Held: (1) the operation of a "Juke Box" constitutes a public amusement within the meaning of the Theatres and places of Public Amusement Enactment, 1936;

(2) in the circumstances of the case, at the material date public amusement was carried on the premises so as to bring those premises within the description of a "place of public amusement."

Cases referred to:—

(1) *Anderson v. Anderson* (1895) 1 Q.B. 749.

(2) *Allen v. Emmerson* (1944) 1 All E.R. 344.

(3) *Amusement Equipment Co. Ltd. v. Macmillan* 85 Sol. J. 333.
(4) *Brearley v. Morley* (1899) 2 Q.B. 121.
(5) *Smith v. Anderson* 15 Ch. D. 247, 277.
(6) *Marks v. Benjamin* 9 L.J.M.C. 20.
(7) *Pharmaceutical Society v. Hornsey* 10 T.L.R. 492.
(8) *Shelley v. Bethell* 12 Q.B.D. 11.

MAGISTRATE'S CRIMINAL APPEAL.

S. P. Seenivasagam for the appellant.

J. D. Peterkin (Sr. Federal Counsel) for the respondent.

Thomson C.J. : —This is an appeal from the Magistrates' Court at Ipoh.

The appellant was convicted on the following charges :—

"That you on or about the 3rd day of August, 1956, at 163, Brewster Road, Ipoh, did keep open a place of public amusement, to wit, a bar where entertainment in the form of music from a juke box is carried on without a licence issued in that behalf, and that you did thereby commit an offence under section 3 punishable under section 10 of the Theatres and Places of Public Amusement Enactment, 1936 (No. 47/36)."

and was fined $25. Against the conviction he has now appealed.

At the trial there was no dispute as to the facts, and indeed the appellant did not give evidence. These facts, so far as they appear from the evidence, are that the appellant is the owner of premises at No. 163, Brewster Road, Ipoh, which he conducts as a coffee shop and a Bar. He holds a liquor licence in respect of the Bar but the premises are not licensed as a place of public amusement. The premises contain chairs and tables and are used *inter alia* for the sale of drinks alcoholic and non-alcoholic for consumption on the premises. In the premises there is also what is known as a Juke Box. This is a large and heavy cabinet which contains a number of gramophone records. When a coin is inserted in a slot and a button corresponding to one of the gramophone records is pushed it emits a series of combined sounds which are described as music and which are no doubt calculated to afford some measure of gratification to certain classes of persons.

On the material date, police officers visited the premises and remained on them for about half an hour. During that time some 5 or 6 soldiers were sitting at a table near the Juke Box drinking, and were continuously operating the Juke Box by inserting coins into it and causing it to emit sounds of the nature described. One of the police officers also operated the apparatus on one occasion.

The case for the appellant, which was argued with considerable skill and pertinacity both before the Magistrate and in this Court, was that in the first place, whatever the nature of the premises, there was no evidence to prove that it was the appellant who was keeping them open, and that in the second place the premises did not constitute a place of public amusement within the meaning of The Theatres and Places of Public Amusement Enactment, 1936.

With regard to the first of these defences, I will content myself with repeating what I said at the hearing of the appeal, that there was ample evidence on which it was open to the learned Magistrate to find, as he did find, that it was the appellant who was keeping the premises open.

The second defence, however, raises a question of some difficulty and, I am told, of some public importance.

Before proceeding further it will be desirable to consider in a general way the Enactment which is said to have been contravened. It is entitled: "An Enactment to provide for the better control of Theatres and Places of Public Amusement". The definition section (section 2) contains a definition of a 'theatre'. It also contains definitions of a 'place of public amusement' and public amusement', which read as follows :—

"'Place of public amusement' means any place, enclosure, building, vessel, tent, booth or other erection, covered or otherwise, whether permanent or temporary, where any public amusement is carried on and to which the public have access either free or on payment of money or on any other consideration and includes an amusement park;

'Public Amusement' means any game, diversion or entertainment of any kind whatsoever provided for the public in which members of the public may take part."

Section 3 provides :—

"No person shall without, or otherwise than in conformity with the conditions of, a licence granted under this Enactment open or keep open any place of public amusement or theatre."

The remainder of the Enactment contains provisions relating to the issue of and enforcement of the conditions of licences, and it is important to observe that the conditions which may be attached to such licences (see section 11) relate to such matters as hours of opening, the conduct of the premises in a decent and orderly manner, the prevention of gambling and the provision of fire precautions, ventilation and sanitation. In other words, the Enactment is not a revenue statute; it is a statute enabling the licensing authority (which in the present case is the Town Council) to exercise control of premises coming within its ambit, with a view to protecting the public interest in matters of decency, morality, safety and health.

Two questions arise in the present case. The first is whether the provision of the Juke Box constituted a public amusement. The second is whether that public amusement was 'carried on' on the premises.

With regard to the first of these questions it is necessary to compare the definitions of a 'theatre' and a 'theatrical performance' contained in the Enactment with the definitions of a 'place of public amusement' and 'public amusement' which have already been quoted. The former definitions read as follows :—

"'Theatre' means any place, enclosure, building, vessel, tent, booth or other erection, covered or otherwise, whether permanent or temporary, where a theatrical performance is performed or presented and to which the public have access either free or on payment of money or on any other consideration;

'Theatrical performance' means any game, diversion or entertainment of any kind whatsoever provided for the public in which members of the public may not take part and includes a cinematograph exhibition."

It will thus be observed that the only difference between a place of public amusement and a theatre is that one is a place where a public amusement is carried on, and the other is a place where a theatrical performance is performed or presented. It will further be observed that, leaving aside the question of amusement parks and cinematograph exhibitions, the only difference between a public amusement and a theatrical performance is that the one is a game, diversion or entertainment in which members of the public may take part, whereas the other is a game, diversion or entertainment in which members of the public may not take part.

It would be a misuse of the English language to describe a performance of Shakespeare's 'Titus Andronicus' or Ibsen's 'Ghosts' as a 'game' or a 'diversion'. On the other hand it would be absurd to say that the performance of such plays does not constitute a 'theatrical performance' and therefore such a performance must be held to fall within the expression 'entertainment'. That leads to the conclusion that the words "game, diversion or entertainment of any kind whatsoever" occurring in the definition of a 'theatrical performance' are not to be read subject to the *ejusdem generis* rule and as the two pairs of definitions which have been considered are contained in the same section of the same statute it follows that the same words in the definition of 'public amusement' are also free from the shackles of the rule in question. I am fortified in that conclusion by a consideration of the case of *Anderson v. Anderson*[1], where it was held that when general words follow an enumeration of particular things those words are *prima facie* to be construed as having their natural and larger meaning and are not to be restricted to things *ejusdem generis* with those previously enumerated.

The learned Magistrate in his admirable judgment has examined with great care a number of English authorities having a bearing on the point and I have derived much assistance from what he has said. I do not, however, find it necessary to discuss these authorities at length for having arrived at the conclusion that the *ejusdem generis* rule does not apply to the words "any game, diversion or entertainment of any kind whatsoever", I do not find it necessary to go any further than to express my agreement with the learned Magistrate in thinking that the present case is on all fours with the case of *William Lawrence Allen v. John Emmerson and others*[2]. In that case a Divisional Court was concerned with what is commonly called a funfair, that is to say premises containing a round-about or merry-go-round and a number of mechanical devices of various sorts purporting to afford amusement to certain classes of the public and available to the public on payment. It was held that such a place constituted a place of entertainment for the purposes of a particular local Act of Parliament, and in delivering the judgment of the Court, Asquith J. made the following observations :—

"We think a satisfactory working definition of 'public entertainment' was one suggested by Counsel for the appellant in argument:

. . . . a place open to members of the public without discrimination who desire to be entertained and where means of entertainment are provided."

As far as the present case is concerned, it is no business of mine to express opinions on matters of taste. No doubt, a person devoted to the music of Johaan Sebastian Bach would take little pleasure in, and derive little entertainment from, producing and listening to the sounds which emanate from the appellant's Juke Box. That, however, is beside the point. There are, no doubt, large classes of the public who do derive pleasure and entertainment from producing or listening to such sounds and that being so, I have no hesitation in saying that the provision of a Juke Box constitutes premises a place of public amusement within the meaning of the Enactment.

I find support for this conclusion in a consideration of the case of *Amusement Equipment Company Ltd. v. Macmillan*[3]. That was a case under section 51(5) of the Public Health Acts Amendment Act, 1890, the terms of which differ substantially from the terms of our Theatres and Places of Public Amusement Enactment, and is therefore not entirely on all fours with the present case. It did, however, concern an apparatus similar to the Juke Box in the present case, and Humphreys J. held that there was ample evidence to show that the premises in which the apparatus was were kept for public entertainment.

I should add in this connection that I have considered the case of *Brearley v. Morley*[4] on which some reliance was placed by Counsel for the appellant. That is a case where it was held that licensed premises on which a piano was provided for the use of such customers as cared to use it were not kept or used for public entertainment within the meaning of the Public

Health Acts Amendment Act, 1890, Section 51. That Act, however, contains no definition of a public entertainment and in the circumstances this case cannot be said to be of any assistance.

Having thus arrived at the conclusion that the operation of the Juke Box constituted a 'public amusement' within the meaning of the Enactment, the question remains whether that 'public amusement' was 'carried on' in the appellant's premises so as to bring those premises within the description of a 'place of public amusement'.

No doubt the expression carry on "implies a repetition of acts", (*per* Brett L.J. — *Smith v. Anderson*[5]) but here there was evidence to support the inference that the Juke Box was an ordinary and usual part of the equipment of the premises and no attempt was made to negative that inference. Again it is clear from the case of *Marks v. Benjamin*[6] that to constitute the offence of keeping an unlicensed place of entertainment it is not necessary that the place in question should be exclusively appropriated to the purposes of such entertainment, and in the case of *Pharmaceutical Society v. Hornsey*[7] it was held that a party who kept a shop for repairing clocks but who sold poison in it was properly convicted for keeping an open shop for retailing poisons in contravention of the Pharmacy Act, 1868. Again for the purposes of section 2 of the Theatres Act, 1843, it was held that where premises were used on a few occasions only for the performance of stage plays they were "had or kept" for that purpose (*Shelley v. Bethell*[8]) and in that case Lord Coleridge C.J. rested himself very largely on the consideration that to decide otherwise might well tend to defeat the objects of the statute.

In all the circumstances of the case I am satisfied that there were grounds on which the learned Magistrate was entitled to hold that the appellant's premises were on the material date a place of public amusement and it is admitted that they were not licensed as such. The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons.*

PUBLIC PROSECUTOR v. V. F. STUART

[A. Cr. J. (Sutherland J.) January 25, 1957]

[K. L. — Criminal Appeal No. 86 of 1956]

Road Traffic — Driving under the influence of drink — Incapable of having proper control over vehicle — Repeated offence — Sentence.

The respondent was charged that he "being the driver of a motor car did drive it on a public road under the influence of drink to such an extent as to be incapable of having proper control over the said vehicle, and thereby committed an offence under reg. 6(1) of the Motor Vehicles (Driving Offences) Proclamation". He was convicted and fined $500 or four months' imprisonment. The Public Prosecutor appealed against this penalty as being manifestly inadequate as the respondent had been previously convicted of a similar offence, for which he was sentenced to imprisonment, and contended that the sentence should be enhanced.

Held: (1) by his repeated offence, it was apparent that the respondent was imperilling the safety of the road users;

(2) the punishment imposed in this case was manifestly inadequate.

The learned Judge accordingly enhanced the sentence by sentencing the respondent to three months' imprisonment in addition to the fine of $500 or four months' imprisonment already imposed.

Case referred to:—

(1) *Hallet v. Newton* (1951) 95 Sol. J. 712.

MAGISTRATE'S CRIMINAL APPEAL.

J. P. Kirby (Federal Counsel) for the appellant.

P. G. Lim for the respondent.

Sutherland J. : — In this appeal Mr. J. P. Kirby, Deputy Public Prosecutor, appeared for the Public Prosecutor, the appellant, and Miss Lim appeared for the respondent.

The charge against the respondent was that on the 17th September, 1956, he being driver of a motor car did drive it on a public road under the influence of drink to such an extent as to be incapable of having proper control over the said vehicle and thereby committed an offence under Regulation 6(1) of the Motor Vehicles (D.O.) Proclamation. The respondent was convicted by the learned President of the Sessions Court and, in what I am sure was a genuine endeavour to arrive at the appropriate punishment, the President fined the accused $500 or four months' imprisonment. The Public Prosecutor appealed against this penalty as being manifestly inadequate.

The learned Deputy stated that as the accused had been previously convicted of a similar offence, the sentence was inadequate. For his first offence he was sentenced to imprisonment but for the second offence, only a fine was imposed. The Deputy Public Prosecutor referred to the 1952 volume of the *Malayan Law Journal* at page xiii and to the *Times* newspaper report of the 13th October, 1951, quoting The Lord Chief Justice's pronouncement[1] as to the proper sentence for persons found guilty of driving under the influence of drink — that driving under the influence of drink was one of the worst offences which it was possible to commit, and the question that Magistrates should ask themselves in such cases was whether any reason existed why the offender should not be sent to prison. The Deputy Public Prosecutor contended that the sentence should be enhanced.

Miss Lim for the respondent stated that imprisonment is not mandatory. The President had a discretion which he exercised fairly in all the circumstances.